

May 31, 2005

Ms. Lea Mitchell, Director
Washington PEER
P.O. Box 2618
Olympia, WA 98507

Dear Ms. Mitchell:

Thank you for your public comment letter received on December 17, 2004, regarding Washington State's Water Quality Assessment for 2002/2004. The department received over 45 comment letters during this last review process and is appreciative of the time you took to review and comment on this assessment. We realize that there is an extensive amount of information in the Water Quality Assessment. The scrutiny given by you and other public reviewers has resulted in many changes and corrections that improved the accurateness of the final submittal to the Environmental Protection Agency (EPA).

The Water Quality Assessment is being submitted to EPA as an "integrated report" to meet the Clean Water Act requirements of sections 305(b) and 303(d). EPA will only take approval action on Category 5 of the assessment, which represents the state's 303(d) list. The Water Quality Assessment can be viewed at <http://www.ecy.wa.gov/programs/wq/303d/index.html>.

Responses to your specific comments, noted below, correspond to the order provided in your letter.

I. *Call for Data, Data Management, and Data Analysis Methods*

1. Ecology held two public notice periods to solicit ambient monitoring data for developing the Water Quality Assessment. The first call for data was held October – December 2002, and the second one was held January – March 2004. During these periods we received data from a wide variety of public and private entities. We also used data entered into Ecology's Environmental Information Management (EIM) system. We agree that we did not select any one facet of the public or private entities over the other. We believe any ambient monitoring data that meets quality assurance requirements is eligible to use for the Water Quality Assessment.
2. Ecology welcomes suggestions for improving its ability to gather data and information to assist in the assessment of Washington's waters. Unfortunately, we do not have an unlimited budget or an unlimited amount of time for data gathering. Through our public calls for data (which includes a public announcement and goes out to a mailing list of several thousand people or entities), we believe we are making

a good faith effort to notify people of the opportunity to submit data. We are also working to have data from outside of Ecology submitted to Ecology's EIM system, and plan to use the EIM system as the basis for the 2006 listing. We believe this will offer a chance for people to continually submit data into the EIM system, and will make our efforts to gather and assess the data more efficient. We will describe this effort further when we revise Policy 1-11, which describes criteria for data submittal and assessments.

3. We used both EIM and SEDQUAL databases to gather data and information on water bodies. We appreciate your concerns, and as mentioned above we are looking at ways to improve the data gathering efforts for 2006.
4. (missing in PEER's letter)
5. We agree that the Water Quality Assessment should be on-going if possible. The development of the Integrated Report and five categories of waters has tremendously increased the amount of data we are assessing, and is a very challenging effort to maintain. We will be working towards this goal in 2006, pending EPA acceptance of a continuous assessment effort (EPA Region 10 has been very cautionary about the likelihood of allowing a continuous assessment process).

II. *Public Involvement in the 303(d) Process*

6. We are sorry that you found the information insufficient to review. We do agree that there is now a tremendous amount of data, given the additional categories that make up the Integrated Report. We have struggled with this challenge ourselves, and can appreciate your frustration. To respond to the examples you gave:
 - a. The segmentation for the water quality listings did not change. The sediment listings for this list did change from 1998 because the segmentation used by the Toxics Cleanup Program changed to become more refined. This change in segmentation should not affect the listings themselves, but provides a more specific location for the contaminated sediment.
 - b. Ecology followed Policy 1-11 that included using the binomial approach for some conventional parameters. This included protocols for minimum data sets. Ecology allowed a minimum of three samples to list if impairment was found. We do not believe this is unreasonable for determining persistent impairment.
 - c. The EPA guidance on placing waterbody segments on the 303(d) list does focus on using numeric criteria as a basis for listing. Waters on the 303(d) list then receive Total Maximum Daily Loads (TMDLs) that limit the loadings from numeric criteria. EPA's guidance did encourage states to add a new category 4C, which lists waters impaired by *pollution* as opposed to *pollutants*. Listings in Category 4C are mainly listed due to narrative standards indicating that habitat appears to be impaired.

III. *Narrative Standards*

7. Please see the third bullet above in response to concerns that Ecology largely did not place waters on the 303(d) list for narrative criteria. Category 4C lists over 450 waterbody segments impaired by *pollution*, which includes impairments to fish habitat, instream flow, bioassessments, and invasive exotic species. Impairment listings in 4C are driven by narrative standards, since water quality criteria largely do not exist for *pollution* impairments, as defined by EPA.
8. Ecology is not able to respond to concerns expressed in #8 without examples, as we are unclear what particular sites you are referencing.

IV. *Waters Listed in Category 2-Waters of Concern*

9. Policy 1-11 did not define threatened waters. EPA guidance defines a threatened water as one that is currently attaining standards, but which are expected to exceed standards by the next listing cycle. Ecology's assessment did not identify any waterbody segments that showed a trend of not meeting standards in the next listing cycle, therefore none were identified on the Category 5/303(d) list.
10. In the 1998 listing for sediments, Ecology used the Contaminated Sediment Site List as a basis for identifying 303(d) listed waters that needed sediment cleanup. This was the same process used in 1996 for identifying sediment sites needing cleanup, which EPA approved. After the 1998 candidate list was submitted to EPA, they added waterbody segments based on their read of the sediment quality standards because they felt that the 1998 revisions to Policy 1-11 were not explicit enough. During the revisions to Policy 1-11 for the 2002/2004 listings, Ecology met with EPA and discussed the most appropriate listing methodology for identifying contaminated sediments for cleanup. The results of those discussions were then included in the Policy 1-11 revisions (see pages 22-23 for assessment criteria for sediment). This criterion was used for sediment listings. Please see the attached explanation of contaminated sediment listings.

V. *Waters Listed in Category 4*

11. Ecology followed EPA Guidance for the Integrated Report. To quote page 5 of the 2004 Guidance, "Waters belong in Category 4 if one or more designated uses are impaired or threatened but establishment of a TMDL is not required." Therefore, it is appropriate that these waterbody segments remain in Category 4.
12. The department appreciates the comment.

VI. *Waters Listed in Category 5*

13. We disagree with your interpretation of EPA's Guidance for identifying threatened waters. EPA further states in their guidance that waters are to be listed threatened if the analysis demonstrates a declining trend, and the projected trend will result in a failure to meet criterion by the date of the next list. Ecology did

not find waters that indicated a conclusive demonstration of declining trend and therefore did not list any waters as threatened.

14. Please refer back to the response under #10. In addition, Ecology has provided further explanation of sediment listings in its submittal to EPA that we believe addresses your concerns for why sediment quality standards were not used exclusively to list, and why we believe it is appropriate to use the Contaminate Sediment Site List as the basis for 303(d) listing purposes for sediment. See Attachment 1 for further explanation of contaminated sediment listings
15. The binomial distribution methodology described in Policy 1-11 requires a minimum data set of three samples. We do not believe that three samples are considered a large data set, and therefore disagree that waters with small data sets were dropped off of the 303(d) list. We have provided EPA with further explanation of the use of the binomial distribution approach, which may be useful for you in understanding the basis for its' inclusion in Policy 1-11.
16. Please see responses under Part 2 and 3 above in relation to listing for narrative criteria.

VI. *Impaired and Water Quality Limited Waters*

17. Ecology followed guidance from EPA for those recommended sub-categories in Category 4. As noted in #11 above, EPA intended waters in Category 4 to be considered those that are impaired in some manner, but not requiring a TMDL. Section 303(d) of the Clean Water Act does not require all waters identified as impaired to be placed on the 303(d) list, and in fact does not refer directly to impairment. Rather, the section requires waters to be identified for which the effluent limitations are not stringent enough to implement water quality standards applicable to the waters, and conduct total maximum daily loads for the pollutants involved.

Thank you again for taking the time to provide comments to Ecology. If you have questions regarding the above responses, or would like further clarification, please feel free to call me at 360-407-6414.

Sincerely,



Susan Braley
Unit Supervisor
Watershed Management Section